

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

MARTIN AND SHIRLEY BADURA,)	DOCKET NO.: PT-1996-23
)	
Appellants,)	
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on the 12th day of August, 1997 in Virginia City, Montana in accordance with the order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law.

The taxpayers, Martin and Shirley Badura, presented testimony in support of their appeal. The Department of Revenue (DOR), represented by Region 6 Field Supervisor Leslie Taylor, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received, and the Board then took the appeal under advisement.

The Board, having fully considered the testimony, exhibits, and all things and matters presented to it by all parties, finds and concludes as follows:

STATEMENT OF THE ISSUES

The taxpayers brought two issues to this Board: they sought a ruling on whether or not their appeal should be granted automatically, since the Madison County Tax Appeal Board failed to hear their appeal in 1996, either prior to the scheduled adjournment of the board's session at the end of September, 1996 or sometime prior to the end of the year after a request and granting of an extension of the board's session; and, if not, the taxpayers sought a reduction, based upon their construction costs, of the 1996 appraised value of the subject improvements as determined by the DOR.

FINDINGS OF FACT

1. Due, proper, and sufficient notice was given of this matter and of the time and place of the hearing. All parties were afforded the opportunity to present evidence, oral and documentary.

2. The taxpayers are the owners of the property which is the subject of this appeal and which is described as:

Improvements only upon Lot 304 of the
Virginia City Ranches subdivision, Madison
County, State of Montana.

3. The DOR appraised the subject property for the 1996 tax year at a value of \$93,700: of that value, \$86,290 is

attributable to the house and \$7,410 to the pole barn. The taxpayers are seeking a value of \$62,000.

4. The taxpayers filed an AB-26 Property Review Form, dated August 9, 1996. The AB-26 form indicates the decision of the DOR review of the property was sent to the taxpayers on September 11, 1996. This decision, signed by L. D. Taylor, stated:

As a result of this review, an adjustment was not made for the following reason: All components of this appraisal appear accurate and correct.

5. The taxpayers appealed to the Madison County Tax Appeal Board on September 20, 1996, and stated in part:

\$62,000 is the total amount (Labor and materials) to build this house and pole barn. Appraiser Les Taylor Graded this house as a 5 and it should be a GRADE 3.

6. In its June 24, 1997 decision, the county board disapproved the appeal for the following reasons:

The appellant denied the Tax Appeal Board access to conduct an on-site review of the property and upon the credible testimony and exhibits submitted by the Department of Revenue.

7. The taxpayers appealed the county board decision to this Board on June 25, 1997, stating in part:

We did not go to the Madison County Appeal

Board on June 12th, 1997 to compare our pictures or invoices with Appraiser Les Taylor, Dept. of Revenue. Martin went there to present and invoke the Montana Statute Section 15-15-103. It states: 'If a county tax appeal board refuses or fails to hear a taxpayer's application for reduction in valuation of property...the taxpayer's application is considered to be granted on the day following the board's final meeting for that year. The county treasurer shall enter the appraisal or classification sought in the application in the assessment book.'

The Madison County Tax Appeal Board should have invoked this law. Instead they went on with the review and heard Les Taylor present his tainted side of the appraisal.

8. The DOR submitted an August 8, 1997 Hearing Memorandum to this Board, with a copy to the taxpayer, which stated in part:

....taxpayers' reliance fails to take into account §15-15-103, MCA's interaction with other applicable statutes. It is a widely accepted rule of law in Montana that when construing statutes, they must be read together and, where as here, there are several provisions or particulars constructed so as to give effect to all statutes involved....

In this case, taxpayers fail to note, and apply, the specific language of §15-15-102 MCA, which is directly applicable to the matter now pending before the Board:

The valuation of property may
not be reduced by the county tax

appeal board unless either the taxpayer or the taxpayer's agent makes and files a written application for reduction with the county tax appeal board. The application must be filed on or before the first Monday in June or 30 days after receiving either a notice of classification and appraisal or determination after review under 15-7-102(3) from the department, whichever is later. ***If the department's determination after review is not made in time to allow the county tax appeal board to review the matter during the current tax year, the appeal must be reviewed during the next tax year,*** but the decision by the county tax appeal board is effective for the year in which the request for review was filed with the department. The application must state the post-office address of the application, specifically describe the property involved, and state the facts upon which it is claimed the reduction should be made. (Emphasis supplied)

....Because §15-15-101 MCA specifically allows the county board to hold over any hearings in which it does not have adequate time to review taxpayer's property valuation, taxpayers' contention in this case must fail and the Board should enter the appropriate order.

TAXPAYER'S CONTENTIONS

In an opening statement, Mrs. Badura stated they wished to have a ruling on their contention that the county board should have heard their appeal in 1996, either before its session ended at the end of September or sometime during the ensuing three month period by asking for and receiving an extension of its session. She further stated that, since the board failed to act, §15-15-103(2) MCA supported their position that their appeal should be granted.

Mrs. Badura testified that the DOR appraisal is incorrect, primarily because the appraiser did not take into account that the materials used in the building of their house were of low grade and quality; therefore, the grade of the house should be reduced from a Grade 5 to a Grade 3, and the value of the pole barn should be reduced as well. She stated that many of the materials were purchased on sale or at auction and those that were purchased were of poor quality: for example, they purchased wafer board in place of plywood and white wood in place of fir or a higher grade of pine. To illustrate the quality of materials used, the taxpayers submitted several photographs of the house and pole barn.(TP Ex 4, 6, 7, 8, 9, 11 & 12)

Mrs. Badura submitted breakdowns of the cost of

materials and labor for the construction of both the house and pole barn. (TP Ex 5 & 13) These exhibits reflected a total construction cost of \$62,000. Mrs. Badura testified that this total construction cost represents what they feel should be the appraised value of the residence and pole barn.

DEPARTMENT OF REVENUE'S CONTENTIONS

Mr. Taylor testified that attached to the AB-26 Property Review Form (DOR Ex D pg 1) filed by the taxpayers on August 9, 1996, was a typewritten statement (DOR Ex D pg 2) describing the quality of materials used to construct the house and pole barn. Also attached were several photocopies of invoices (DOR Ex D pgs 4-9) from various suppliers from whom the taxpayers purchased materials. Mr. Taylor stated that, after the AB-26 was filed, he visited the subject property again and reviewed with Mrs. Badura the descriptive data he had compiled for the property record card.

Prior to the county hearing, Mr. Taylor testified he contacted by telephone some of the suppliers whose names appeared on documents that were attached to the AB-26. Admitting he was not an expert in lumber grading, he stated he felt compelled to contact suppliers to discuss the quality of materials sold to the taxpayers and used to construct their

residence and pole barn.

Mr. Taylor testified that he spoke with a person at Madison Lumber Company in Ennis, the source of the cedar siding purchased (which Mrs. Badura referred to as "#4 Cabin Grade" siding). (DOR Ex D pg 4) He was told that the siding had good milling (dimensions and cutting), and it was graded as cabin grade because of knots. Mr. Taylor was told that it was popular siding because it is less expensive and is selectively used (people select better boards from those available). He was told that the windows purchased (which Mrs. Badura referred to as "cheapest you could find") (DOR Ex D pg 5) were Clawson windows and considered to be of good quality, although less expensive as they are made in Montana, but they are not inferior and are comparable to Andersen Windows.

Mr. Taylor testified he spoke with a person at Simkins-Hallin Lumber Co. in Bozeman, the source of lumber purchased (which Mrs. Badura referred to as "whitewood used throughout [sic] house 2x4 walls," "2'x4's whitewood used," and "wafer board used throughout"). (DOR Ex D pgs 7-9) He was told that "HEM FIR/WHITE WOOD" shown on two of the invoices was a #2 or better grade of lumber, dimension lumber of good quality and, if it had been of less than good quality, the

invoice would have stated "utility" or "econo."

Mr. Taylor submitted pages from the DOR appraisal manual listing characteristics and pictures typical of quality grades 3, 4, and 5 residences and characteristics and pictures typical of low cost, average, and good quality pole barns. (DOR Ex E, pgs 1-8) He testified that he appraised the residence as an "average" quality structure, a Grade 5. In this determination, he took into account the purchase of 2x6 lumber, the pitch of the roof, number of plumbing fixtures, adequate insulation, and adequate electrical outlets. He testified that he appraised the pole barn as a "good" quality structure. Noting that the description of a good quality pole barn would typically have a concrete floor, he pointed out that, if the Badura's barn had such a floor, a modification of \$1.90/SF to the value would have been applied, as cited in DOR Ex E, page 7.

Mr. Taylor said that the DOR is required by statute (§15-8-111) to assess all taxable property at 100% of market value. (DOR Ex G) He submitted a definition of market value from the Property Appraisal and Assessment Administration manual, page 651, published by the International Association of Assessing Officers (IAAO):

Market value. The most probable sale price of a property in terms of money in a competitive and open **market**, assuming that the buyer and seller are acting prudently and knowledgeably, allowing sufficient time for the sale, and assuming that the transaction is not affected by undue pressures.

Mr. Taylor testified that the property was not market modeled because, at the time of the appraisal, it was not 100% complete. He stated that, when using the cost approach to determine market value for a property, it is necessary to adjust the construction value to reflect depreciation from all forces; and this is a function of combining a condition/desirability/utility(CDU)factor with the age of the structure to develop a depreciation percentage.

In the case of the subject property, he determined the CDU was excellent: the residence was new and in excellent condition without observable accelerated depreciation present; the size, and average quality grade of construction, would place the desirability of the subject property between excellent and very good; and, it did serve adequately the function or purpose for which it was built, that of a single family house, and would place the utility of the subject property as excellent. The formula utilized by the DOR

combines these components and resulted in a CDU rating of excellent for the subject property.

Again, the function of combining a CDU factor with the age of the structure, develops a depreciation percentage. In the case of the subject property, that depreciation was reflected as 98% good, or depreciation of 2%.

Mr. Taylor did concede that at times the roads to the subject property are not in good condition but this fact did not negatively affect his opinion that the desirability of the property was very good to excellent. Mr. Taylor also conceded he had not considered the fact that the structure had been designed as a duplex and was being utilized as a single family dwelling and there might be, in fact, some elements of super-adequacy present which could affect the utility designation of excellent.

Mr. Taylor testified that, when using the cost approach to determine market value for a property, it also is necessary to adjust construction value to reflect the local market by applying an Economic Condition Factor (ECF), a figure which has been developed based on sales of comparable properties. In the case of the subject property, the construction value less depreciation has been adjusted downward

by applying an ECF of 92%.

DISCUSSION

The taxpayers requested a ruling on whether or not their appeal should be granted automatically since the county board failed to hear their appeal in the year in which it was filed, citing §15-15-103(2) MCA as the authority to grant this request.

For interpretive purposes, statutes must be read together rather than individually or selectively. When the portion of the statute cited by the taxpayers to support their argument is read together with §15-15-102, it is evident that, when not enough time exists in which to hear an appeal in a given session, a county board does, indeed, have the authority to hold over that appeal and hear it the following year.

The second issue before this Board is the taxpayers' request that the 1996 appraised value of the subject property be reduced to reflect their construction costs. "The quality of materials and workmanship is the one most significant variable to be considered in estimating the replacement cost of a structure." (41.1.3, Montana Appraisal Manual, Department of Revenue) Based upon the evidence and testimony provided, it is the opinion of this Board that the

materials used in the construction of the subject residence were of slightly less than average quality and the quality grade of the structure should be reduced accordingly.

The DOR established an "excellent" CDU factor for the subject property. This CDU factor represents the appraiser's opinion of the "physical condition of the building and the degree of desirability and usefulness for the building age and type." (47.4.1.1. Montana Appraisal Manual) The factor is developed through a weighted formula, and the desirability segment of this formula takes into account the locational desirability of the property. The Montana Appraisal Manual defines an excellent CDU as: "Dwelling is in perfect condition; very attractive and highly desirable". Based upon the evidence and testimony provided, it is the opinion of this Board that the CDU of the subject property is affected negatively by both location and utility. The access to the property is at times difficult due to inferior roads; and the usefulness of the residence is impacted because it is utilized as a single family dwelling built as a duplex. The CDU rating should be reduced to reflect these negative influences.

Finally, the DOR designated the quality of the pole barn as "good". It is the opinion of this Board that the

subject pole barn would be more accurately graded as "average" based upon testimony and evidence provided and applied to specifications reflected in 44-16 of the Montana Appraisal Manual, submitted as DOR Ex E pg 7.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. §15-2-302 MCA

2. A county tax appeal board has the authority to hold over an appeal and hear it the following year when not enough time exists in which to hear that appeal in a given session. §15-15-102 MCA

3. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and the taxpayer must overcome this presumption. The Department of Revenue, however, should bear a certain burden of providing documented evidence to support its assessed value. Western Airlines, Inc. v. Catherine J. Michunovich, et al, 149 Mont. 347.428 P.2d 3.(1967).

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Madison County by the assessor of that county at the 1996 tax year value calculated after reductions applicable to the residence from excellent to "good" for the condition, desirability, and utility (CDU) and from 5 to 5- for the quality grade, and a reduction applicable to the pole barn from good to "average" for the grade.

Dated this 5th day of September, 1997.

BY ORDER OF THE
STATE TAX APPEAL BOARD

PATRICK E. MCKELVEY, Chairman

(S E A L)

GREGORY A. THORNQUIST, Member

LINDA L. VAUGHEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.